

## Remarks

The above Amendments and these Remarks are in reply to the Office Action mailed July 6, 2004.

Claims 54-63 were pending in the Application prior to the outstanding Office Action. In the Office Action, the Examiner rejected claims 54-63. The present Response amends claims 54 and 58, leaving for the Examiner's present consideration claims 54-63. Reconsideration of the rejections is requested.

### I. REJECTION UNDER 35 U.S.C. §102(B) OVER *ZUCHERMAN* (U.S. PAT. NO. 5,836,948)

#### *Claims 54, 55, 58, and 59*

The Examiner rejected claims 54, 55, 58, and 59 under 35 U.S.C. § 102(b) as being anticipated by *Zucherman*. The Applicants respectfully traverse the rejection.

The Examiner states that “subsequent larger dilator must have a curved tip so that the subsequent larger dilator can be placed over the preceding smaller dilator (col. 9, lines 51-60)” (Emphasis added). See OA, page 2. Claims 54 and 58 recite a “tip having a rigid shape and increasing from a first diameter to a second diameter...wherein the first diameter of the tapered curved tip for a subsequent dilator is substantially the same as the second diameter of the tapered curved tip of a preceding dilator.” *Zucherman* teaches a plurality of cannulas wherein at least one “slightly bigger” cannula slides over the first cannula like a sleeve. See column 9, lines 46-52. Because subsequent cannulas slide over preceding cannulas, where the cannula is rigid the subsequent cannula **must** have a diameter at least large enough to accommodate the curve of the tips, and thus must be sized substantially larger than a second diameter of the preceding cannula. A sleeve-like subsequent cannula **cannot have both** a curved tip having a rigid shape and a first diameter that is substantially the same as the second diameter of the tapered curved tip

of a preceding cannula, otherwise the subsequent tip cannot slide past the curve of the preceding cannula. The subsequent cannula is physically blocked by the curve of the tip of the preceding cannula. For example, imagine sliding a rigid, straight sleeve over a rigid, curved dilator, wherein the rigid, straight sleeve is only slightly larger in diameter than the rigid, curved dilator. The rigid, straight sleeve will be blocked at the curved portion of the curved dilator. Curving the sleeve does not solve the problem of the blocked motion. Indeed, the curve of the subsequent dilator itself blocks its motion over the preceding dilator.

*Zucherman* fails to disclose a series of dilators (or devices) wherein each of the dilators (devices) in the series of dilators (devices) includes a “tapered curved tip having a rigid shape and increasing from a first diameter to a second diameter...wherein the first diameter of the tapered curved tip for a subsequent dilator is substantially the same as the second diameter of the tapered curved tip of a preceding dilator” as recited in claims 54 and 58. Since *Zucherman* fails to disclose all of the features of claims 54 and 58, *Zucherman* cannot anticipate claims 54 and 58 under 35 U.S.C. §102(b). Claim 55 depends from claim 54, and claim 59 depends from claim 58. Dependent claims have at least the features of the independent claim from which they depend; therefore, *Zucherman* cannot anticipate claims 55 and 59 under 35 U.S.C. §102(b). Accordingly, the Applicants respectfully request withdrawal of this rejection.

## **II. REJECTION UNDER 35 U.S.C. §103(A) OVER *ZUCHERMAN***

### ***Claims 56, 57 and 60-63***

The Examiner rejected claims 56, 57 and 60-63 under 35 U.S.C. § 103(a) over *Zucherman*. The Applicants respectfully traverse this rejection.

For the reasons described in Section I above, *Zucherman* fails to teach or suggest all of the features of claims 54 and 58. Claims 56, 57 and 62 depend from claim 54, and claims 60, 61 and 63 depend from claim 58. Dependent claims have at least the features of the independent claim from which they depend; therefore, *Zucherman* fails to teach or suggest all of the features of claims 56, 57 and 60-63. Since *Zucherman* fails to teach or suggest all of the features of claims 56, 57 and 60-63, *Zucherman* cannot render claims 56, 57 and 60-63 obvious under 35 U.S.C. § 103(a)


### III. CONCLUSION

In light of the above, it is respectfully submitted that all of the claims now pending in the subject patent application should be allowable, and a Notice of Allowance is requested. The Examiner is respectfully requested to telephone the undersigned before an advisory action is issued in order to avoid any unnecessary filing of an appeal.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 06-1325 for any matter in connection with this response, including any fee for extension of time, which may be required.

Respectfully submitted,

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